

USEPA-R6  
Dallas, Texas

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NOV 17 1983

11/17/83

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

W. T. Womble, Esquire  
Crain, Caton, James, & Womble  
3300 Two Houston Center  
Houston, Texas 77010

Re: NOTICE OF DENIAL OF CLAIM OF CONFIDENTIALITY  
Southern Pacific Transportation Company (Southern Pacific)  
Claim of Business Confidentiality with Respect to Letter  
of W. T. Womble dated September 26, 1983 and Report of  
Dr. Eugene Brams Enclosed Therewith

Dear Mr. Womble:

Receipt of your letter dated October 25, 1983, concerning the above  
noted Claim of Business Confidentiality, is hereby acknowledged.

As you were informed by James L. Turner of my office in his letter of  
October 11, 1983, the environmental statutes under which the subject  
information was obtained (42 U.S.C. §6927, 42 U.S.C. §9604) provide  
that such information shall be available to the public, unless entitled  
to treatment as confidential business information. Mr. Turner's letter  
further informed you in accordance with 40 CFR 2.204(e), of Southern  
Pacific's right to comment on its business confidentiality claim, including  
the right to address a number of specific relevant points relating to the  
claim. You responded to that opportunity on behalf of Southern Pacific  
by letter dated October 25, 1983.

In your letter of October 25th, you indicated that the reason for the claim  
of business confidentiality related to Southern Pacific's involvement in  
civil litigation with another party and the desire to protect the report of  
your expert (Dr. Eugene Bram's report) from discovery, where it would  
otherwise be protected from discovery under Rule 25, F.R.C.P.

While your concern is understandable, you are advised that such information  
obtained by EPA under the aforesaid statutes can be protected from public  
disclosure only if it is confidential business information. You have  
not made a demonstration of such entitlement by showing that disclosure  
of the information is likely to cause substantial harm to Southern Pacific  
Transportation Company's competitive position. Further, an examination  
of these materials by my staff fails to indicate the possibility of such  
harm. The materials in question were required to be submitted by the  
statutes cited above and were not voluntarily submitted.

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Therefore, after a careful review of your letter dated September 26, 1983, and the enclosure thereto, a report prepared by Dr. Eugene Brans, and in accordance with 40 CFR 2.205 and 40 CFR 2.208, the claim of business confidentiality by Southern Pacific Transportation Company with respect to said materials is hereby denied. This determination constitutes final agency action with respect to Southern Pacific's claim, and this action may be subject to judicial review under Chapter 7 of Title 5, United States Code. Subject to 40 CFR 2.210, the information in question shall be available to the public on the tenth (10) working day after your receipt of this notice, unless this office receives prior notice of the commencement of an action in Federal Court by Southern Pacific Transportation Company to obtain judicial review of the determination, and to obtain preliminary injunctive relief against disclosure. You are further advised that once such action is commenced, EPA may nonetheless make the information available to the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld this determination, or whenever it appears to this office, after reasonable notice to Southern Pacific Transportation Company, that Southern Pacific is not taking appropriate measures to obtain a speedy resolution of the action.

Please call Jim Turner at (214) 767-9975 if you have any questions.

Sincerely yours,

Paul Seals  
Regional Counsel

cc: Southern Pacific Transportation Company

bcc: Nita House (FOIA Officer)  
Sam Nott (6AW-SE)  
David Price (6AW-SE)  
Jim Turner (6ORC)  
OGC  
Headquarters FOIA Officer